STATE OF NEW YORK

1487

2019-2020 Regular Sessions

IN ASSEMBLY

January 15, 2019

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the public authorities law, the executive law, the public health law, and the transportation law, in relation to establishing small business mentoring programs; and providing for the repeal of such provisions upon the expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The public authorities law is amended by adding a new section 1678-b to read as follows:

§ 1678-b. Dormitory authority small business mentoring program. 1. Definitions. As used in this section, unless the context requires otherwise:

(a) "small business" means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the authority pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the authority. The authority shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the authority;

(b) "small business mentoring program" is a program established by the authority pursuant to this section to provide small businesses accepted into the program with the opportunity:

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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(i) for up to four years, to compete for and, where awarded, to perform certain authority public work contracts to be designated by the authority for inclusion in this program under this subparagraph, with the assistance of an authority-provided mentor, which shall be a firm competitively selected by the authority that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing authority public work contracts; and

(ii) for a small business mentoring program participant which the authority has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such authority public work contracts, with the further assistance of an authority-provided mentor, which shall be a firm competitively selected by the authority that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing authority public work contracts, and (B) authority-provided assistance, as determined by the authority, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section; and

(c) "small business mentoring program contract" means a non-federally funded authority public work contract designated by the authority, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (b) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (b) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the authority to compete for the contract.

2. Small business mentoring program. (a) Pursuant to this section, the authority shall establish a small business mentoring program. In connection therewith, the authority may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, the number of participants to participate in each such component of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

(b) Under the small business mentoring program, the authority is authorized, notwithstanding any other provision of law:

(i) to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, respectively;

(ii) to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

(iii) to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the authority for such competition;

(iv) to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the authority, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

(v) for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of this chapter and any other provision of law;

(vi) to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

(vii) for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (b) of subdivision one of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for authority public work contracts that are not small business mentoring program contracts, for which the small business is otherwise qualified.

(c) Under the small business mentoring program, the authority shall, notwithstanding any other provision of law:

(i) require that thirty percent of all New York state funded contracts over one hundred thousand dollars be awarded to minority and women-owned businesses;

(ii) require that eighteen percent of all federal transit administration funded contracts be awarded to disadvantaged business enterprises;

(iii) require that six percent of all New York state funded contracts be awarded to service disabled veteran-owned businesses;

(iv) provide a thirteen-week class at no cost for training on construction and business development;

(v) develop and implement a small business loan program where firms are eligible to obtain loans up to nine hundred thousand dollars per contract; and

(vi) develop and implement a program for providing free business plans, legal advice, financial guidance, and administrative and back-office support for small businesses participating in the program.

3. Withdrawal of designation of small business mentoring program contracts. (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the authority determines that acceptance of the best offer will result in the payment of an unreasonable price, the authority may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.

(b) If the authority withdraws the designation of a contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract periods.

4. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the authority, which may include the following: (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;

(b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;

(c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract; and

(d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.

5. Aggregate amount. The small business mentoring program contracts authorized by this section shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the authority.

§ 2. The executive law is amended by adding a new section 204 to read as follows:

§ 204. Office of general services small business mentoring program. 1. Definitions. As used in this section, unless the context requires otherwise:

(a) "small business" means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the office of general services pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the office of general services. The office of general services shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the office of general services;

(b) "small business mentoring program" is a program established by the office of general services pursuant to this section to provide small businesses accepted into the program with the opportunity:

(i) for up to four years, to compete for and, where awarded, to perform certain office of general services public work contracts to be designated by the office of general services for inclusion in this program under this subparagraph, with the assistance of an office of general services-provided mentor, which shall be a firm competitively selected by the office of general services that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing office of general services public work contracts; and

(ii) for a small business mentoring program participant which the office of general services has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where

awarded, to perform such office of general services public work contracts, with the further assistance of an office of general services-provided mentor, which shall be a firm competitively selected by the office of general services that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing office of general services public work contracts, and (B) office of general services-provided assistance, as determined by the office of general services, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section;

(c) "small business mentoring program contract" means a non-federally funded office of general services public work contract designated by the office of general services, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (b) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (b) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the office of general services to compete for the contract.

2. Small business mentoring program. (a) Pursuant to this section, the office of general services shall establish a small business mentoring program. In connection therewith, the office of general services may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, the number of participants to participate in each such component of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

(b) Under the small business mentoring program, the office of general services is authorized, notwithstanding any other provision of law:

(i) to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, respectively;

(ii) to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

(iii) to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the office of general services for such competition;

(iv) to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the office of general services, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

(v) for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of the public authorities law and any other provision of law;

(vi) to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

(vii) for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (b) of subdivision one of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for office of general services public work contracts that are not small business mentoring program contracts, for which the small business is otherwise qualified.

(c) Under the small business mentoring program, the office of general services shall, notwithstanding any other provision of law:

(i) require that thirty percent of all New York state funded contracts over one hundred thousand dollars be awarded to minority and women-owned businesses;

(ii) require that eighteen percent of all federal transit administration funded contracts be awarded to disadvantaged business enterprises;

(iii) require that six percent of all New York state funded contracts be awarded to service disabled veteran-owned businesses;

(iv) provide a thirteen-week class at no cost for training on construction and business development;

(v) develop and implement a small business loan program where firms are eligible to obtain loans up to nine hundred thousand dollars per contract; and

(vi) develop and implement a program for providing free business plans, legal advice, financial guidance, and administrative and back-office for support small businesses participating in the program.

3. Withdrawal of designation of small business mentoring program contracts. (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the office of general services determines that acceptance of the best offer will result in the payment of an unreasonable price, the office of general services may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.

(b) If the office of general services withdraws the designation of a contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract periods.

4. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the office of general services, which may include the following: (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;

(b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;

(c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract; and

(d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.

5. Aggregate amount. The small business mentoring program contracts authorized by this section shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the office of general services.

§ 3. The public health law is amended by adding a new section 411 to read as follows:

§ 411. Department of health small business mentoring program. 1. Definitions. As used in this section, unless the context requires otherwise:

(a) "small business" means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the department pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the department. The department shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the department;

(b) "small business mentoring program" is a program established by the department pursuant to these provisions to provide small businesses accepted into the program with the opportunity:

(i) for up to four years, to compete for and, where awarded, to perform certain department public work contracts to be designated by the department for inclusion in this program under this subparagraph, with the assistance of a department-provided mentor, which shall be a firm competitively selected by the department that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing department public work contracts; and

(ii) for a small business mentoring program participant which the department has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such department public work contracts, with the further assistance of a department-provided mentor, which shall be a firm competitively selected by the department that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing department public work contracts, and (B) department-provided assistance, as determined by the department, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section.

(c) "small business mentoring program contract" means a non-federally funded department public work contract designated by the department, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (b) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (b) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the department to compete for the contract.

2. Small business mentoring program. (a) Pursuant to this section, the department shall establish a small business mentoring program. In connection therewith, the department may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, the number of participants to participate in each such component of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

(b) Under the small business mentoring program, the department is authorized, notwithstanding any other provision of law:

(i) to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, respectively;

(ii) to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

(iii) to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the department for such competition;

(iv) to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the department, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

(v) for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of the public authorities law and any other provision of law;

(vi) to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

(vii) for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (b) of subdivision one of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for department public work contracts that are not small business mentoring program contracts, for which the small business is otherwise qualified.

(c) Under the small business mentoring program, the department shall, notwithstanding any other provision of law:

(i) require that thirty percent of all New York state funded contracts over one hundred thousand dollars be awarded to minority and women-owned businesses;

(ii) require that eighteen percent of all federal transit administration funded contracts be awarded to disadvantaged business enterprises;

(iii) require that six percent of all New York state funded contracts be awarded to service disabled veteran-owned businesses;

(iv) provide a thirteen-week class at no cost for training in construction and business development for small businesses participating in the program;

(v) develop and implement a small business loan program where firms are eligible to obtain loans up to nine hundred thousand dollars per contract; and

(vi) develop and implement a program for providing free business plans, legal advice, financial guidance, and administrative and back-office support for small businesses participating in the program.

3. Withdrawal of designation of small business mentoring program contracts. (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the department determines that acceptance of the best offer will result in the payment of an unreasonable price, the department may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.

(b) If the department withdraws the designation of a contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract periods.

4. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the department, which may include the following: (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;

(b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;

(c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract; and

(d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.

5. Aggregate amount. The small business mentoring program contracts authorized by this legislation shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the department.

§ 4. The transportation law is amended by adding a new section 23 to read as follows:

§ 23. Department of transportation small business mentoring program. 1. Definitions. As used in this section, unless the context requires otherwise:

(a) "small business" means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the department pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the department. The department shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the department;

(b) "small business mentoring program" is a program established by the department pursuant to this section to provide small businesses accepted into the program with the opportunity:

(i) for up to four years, to compete for and, where awarded, to perform certain department public work contracts, including but not limited to contracts for thruway and bridge projects, to be designated by the department for inclusion in this program under this subparagraph, with the assistance of a department-provided mentor, which shall be a firm competitively selected by the department that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing department public work contracts; and

(ii) for a small business mentoring program participant which the department has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such department public work contracts, with the further assistance of a department-provided mentor, which shall be a firm competitively selected by the department that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing department public work contracts, and (B) department-provided assistance, as determined by the department, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section.

(c) "small business mentoring program contract" means a non-federally funded department public work contract designated by the department, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (b) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (b) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the department to compete for the contract.

2. Small business mentoring program. (a) Pursuant to this section, the department shall establish a small business mentoring program. In connection therewith, the department may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, the number of participants to

participate in each such component of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

(b) Under the small business mentoring program, the department is authorized, notwithstanding any other provision of law:

(i) to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (b) of subdivision one of this section, respectively;

(ii) to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

(iii) to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the department for such competition;

(iv) to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the department, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

(v) for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of the public authorities law and any other provision of law;

(vi) to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

(vii) for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (b) of subdivision one of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for department public work contracts that are not small business mentoring program contracts, for which the small business is otherwise qualified.

(c) Under the small business mentoring program, the department shall, notwithstanding any other provision of law:

(i) require that thirty percent of all New York state funded contracts over one hundred thousand dollars be awarded to minority and women-owned businesses;

(ii) require that eighteen percent of all federal transit administration funded contracts be awarded to disadvantaged business enterprises;

(iii) require that six percent of all New York state funded contracts be awarded to service disabled veteran-owned businesses;

(iv) provide a thirteen-week class at no cost for training in construction and business development for small businesses participating in the program;

(v) develop and implement a small business loan program where firms are eligible to obtain loans up to nine hundred thousand dollars per contract; and

(vi) develop and implement a program for providing free business plans, legal advice, financial guidance, and administrative and back-office support for small businesses participating in the program.

3. Withdrawal of designation of small business mentoring program contracts. (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the department determines that acceptance of the best offer will result in the payment of an unreasonable price, the department may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.

(b) If the department withdraws the designation of a contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract periods.

4. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the department, which may include the following: (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;

(b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;

(c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract; and

(d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.

5. Aggregate amount. The small business mentoring program contracts authorized by this section shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the department.

§ 5. 1. The empire state development corporation (hereinafter "corporation") shall develop, establish, and implement a small business mentoring program to provide small businesses with opportunities for public work contracts and assistance in management.

2. As used in this section, unless the context requires otherwise:

(a) "small business" means a business in the construction trades which (i) is independently owned and operated; (ii) has annual revenues not exceeding a fiscal limitation of five million dollars or such lesser amount as established by the corporation pursuant to these provisions; and (iii) meets additional criteria as otherwise established by the corporation. The corporation shall establish a detailed definition in general and specific to different segments of the construction industry to the extent necessary to reflect differing characteristics of such segments based on the criteria used by the United States small business administration for loans to small businesses as set forth in Sections 121.301 through 121.305, or for awarding government procurements as set forth in Sections 121.401 through 121.413, of Subpart A of Part 121 of

Chapter I of Title 13 of the Code of Federal Regulations as amended, and such other criteria as determined by the corporation;

(b) "small business mentoring program" is a program established by the corporation pursuant to this section to provide small businesses accepted into the program with the opportunity:

(i) for up to four years, to compete for and, where awarded, to perform certain corporation public work contracts to be designated by the corporation for inclusion in this program under this subparagraph, with the assistance of a corporation-provided mentor, which shall be a firm competitively selected by the corporation that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and assistance in competing for and managing corporation public work contracts; and

(ii) for a small business mentoring program participant which the corporation has determined has successfully completed the program under subparagraph (i) of this paragraph, for up to four additional years, (A) additional opportunities to compete with other designated small businesses in the program for certain public work contracts to be designated for inclusion under this subparagraph and, where awarded, to perform such corporation public work contracts, with the further assistance of a corporation-provided mentor, which shall be a firm competitively selected by the corporation that has extensive construction management and mentoring experience, with the mentor to provide the small business with advice and technical assistance in competing for and managing corporation public work contracts, and (B) corporation-provided assistance, as determined by the corporation, for such a small business to obtain bonding for public work contracts that are competitively awarded pursuant to provisions of law other than this section; and

(c) "small business mentoring program contract" means a non-federally funded corporation public work contract designated by the corporation, in an estimated amount of not more than one million dollars for contracts under subparagraph (i) of paragraph (b) of this subdivision and three million dollars for contracts under subparagraph (ii) of paragraph (b) of this subdivision, for which bids or proposals are to be invited and accepted only from businesses that are enrolled in the small business mentoring program and have been selected by the corporation to compete for the contract.

3. Small business mentoring program. (a) In connection with the establishment of the program pursuant to subdivision one of this act, the corporation may determine the criteria pursuant to which a small business shall be eligible for and selected to participate in the program under subparagraphs (i) and (ii) of paragraph (b) of subdivision two of this section, the number of participants to participate in each such component of the program, the criteria for the competitive selection of the firms that will provide small businesses with mentoring services, the assignment of a mentor to a specific small business in the small business mentoring program, and the funding for the program.

(b) Under the small business mentoring program, the corporation is authorized, notwithstanding any other provision of law:

(i) to designate which eligible public work contracts shall be small business mentoring program contracts under subparagraphs (i) and (ii) of paragraph (b) of subdivision two of this section, respectively;

(ii) to establish standards for qualifying small business mentoring program participants to compete for a small business mentoring program contract, provided that no less than three qualified small businesses in the program must submit responsive offers to perform the contract;

(iii) to determine when bids or proposals for a small business mentoring program contract should be restricted to small business mentoring program participants which, prior to the receipt of bids or proposals, have been qualified by the corporation for such competition;

(iv) to competitively select, designate and contract with one or more experienced construction management firms that, under the general supervision of the corporation, will provide mentoring services to the small businesses participating in the small business mentoring program, and to assign such mentors one or more designated small businesses participating in the program;

(v) for small business mentoring program contracts, except as set forth herein, to waive requirements for the solicitation and award of a public work contract pursuant to sections twelve hundred nine, twelve hundred sixty-five-a and twenty-eight hundred seventy-nine of the public authorities law and any other provision of law;

(vi) to assist only small business mentoring program participants that have been awarded small business mentoring program contracts to obtain any surety bond or contract of insurance required of them in connection with such contract only notwithstanding any provision of section two thousand five hundred four of the insurance law to the contrary; and

(vii) for small businesses that have been accepted into the small business mentoring program under subparagraph (ii) of paragraph (b) of subdivision two of this section, in addition to the benefits of such program and notwithstanding any other provision of law, to provide technical assistance in obtaining bid, payment and performance bonding for corporation public work contracts that are not small business mentoring program contracts, for which the small business is otherwise qualified.

(c) Under the small business mentoring program, the corporation shall, notwithstanding any other provision of law:

(i) require that thirty percent of all New York state funded contracts over one hundred thousand dollars be awarded to minority and women-owned businesses;

(ii) require that eighteen percent of all federal transit administration funded contracts be awarded to disadvantaged business enterprises;

(iii) require that six percent of all New York state funded contracts be awarded to service disabled veteran-owned businesses;

(iv) provide a thirteen-week class at no cost for training in construction and business development for small businesses participating in the program;

(v) develop and implement a small business loan program where firms are eligible to obtain loans up to nine hundred thousand dollars per contract; and

(vi) develop and implement a program for providing free business plans, legal advice, financial guidance, and administrative and back-office support for small businesses participating in the program.

4. Withdrawal of designation of small business mentoring program contracts. (a) If the total number of qualified small business mentoring program participants that respond to a competition and are considered capable of meeting the specifications and terms of the invitation to compete is less than three, or if the corporation determines that acceptance of the best offer will result in the payment of an unreasonable price, the corporation may reject all offers and withdraw the designation of the contract as a small business mentoring program contract.

(b) If the corporation withdraws the designation of a contract as a small business mentoring program contract, the firms, if any, that made offers shall be notified. Invitations to compete containing the same or rewritten specifications and terms shall then be re-issued as a small business mentoring program contract for one or more additional contract periods.

5. Construction manager mentors. A mentor shall provide services and assistance to a small business as designated by the corporation, which may include the following: (a) provide business training in the skills necessary to operate a successful construction business and to compete for and perform a public work contract;

(b) provide technical assistance to the small business to assess the outcome if the small business competes for but is not awarded a contract;

(c) if the small business mentoring program contract is awarded to the small business, provide guidance, advice and technical assistance to the small business in the performance of the contract; and

(d) provide other technical assistance to the small business to facilitate learning, training and other issues which may arise.

6. Aggregate amount. The small business mentoring program contracts authorized by this section shall, for the initial year of the program, be in an aggregate amount of not less than ten million dollars, and shall not exceed one hundred million dollars, with the maximum amount in future years to be set by the corporation.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law and shall expire December 31, 2023 when upon such date the provisions of this act shall be deemed repealed; provided that such expiration shall not apply to pending and awarded public work contracts and provided further that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.